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Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

**Re: Docket No. R- 1176**

Dear Jennifer:

The Board seeks comment to amendments to Regulation CC that would add a new subpart D, with commentary, to implement the recently-enacted Check Clearing for the 21<sup>st</sup> Century Act ("Check 21"). These proposed amendments address operational, legal, and consumer compliance matters that relate to substitute checks. The proposed amendments also would clarify some existing provisions of the regulation and commentary.

The following comments on behalf of the Consumer Affairs section of the Supervision and Regulation Department of the Atlanta Reserve Bank are limited to the consumer compliance provisions of the proposed changes.

## **I. Amendments to Implement the Check 21 Act**

### **Section 229.54(b) - Procedures for Malting Claims**

Measuring the time period for acting on a consumer's claim from the business day after the "banking day" that a claim is received, rather than the business day that a claim is received provides consistent procedural standards within Regulation CC. Other timeframes in Regulation CC, such as funds availability (§ 229.10) and return deadlines (§ 229.30), focus on the banking day of receipt, rather than the business day of receipt. The "banking day" standard will provide banks more time than a "business day" standard to respond to recredit claims, which should in turn enable them to more thoroughly research such claims.

The Board has also proposed that a consumer's use of electronic media to submit a recredit claim indicates the consumer's agreement to receive recredit notices through the same channel. Although the proposed rule has prohibited banks from requiring written claims to be made electronically, the implicit agreement to use electronic media between consumer and bank after the initial consumer electronic claim may need to be included

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under the Electronic Signatures in Global and National Commerce Act (E-Sign Act) disclosures of the affected consumer's bank account(s). Specific mention of this allied consumer disclosure may need to be incorporated into the commentary for this section. This would also be consistent with the proposed commentary to sections 229.13 (exception hold notices) and 229.15 (general disclosure requirements) that would require banks to comply with the E-Sign Act when they provide these disclosures electronically. Without the E-Sign Act's assurance that accurate electronic communication is capable of being both received and transmitted from the claiming consumer, the currently proposed process may cause difficulties in the recredit claims process.

#### Section 229.54(c) - Action on Claims

The reorganization of the Check 21 statute's requirements for action on a consumer's expedited recredit claim appears to be consistent with similar consumer claims procedures under the Board's Regulation E (Electronic Fund Transfer) and Regulation Z (Truth in Lending) rules for consumer claims of wrongful transactions and associated charges. Appropriate circumstances, procedure, timing and content of asserted claims, validity/invalidity standards, and action time limits logically provide both the bank and consumer with instructive procedures for making and resolving recredit claims.

Actual experience with this process may not be as logically expedient. Chronic claims originated by individuals who perceive their right to claim without limit, despite factual evidence to the contrary, may lead to frivolous claims. Although Check 21 provides a safeguard exception whereby banks may delay availability when there is reasonable cause to believe that a claim is fraudulent, it would be helpful if the Board's commentary permitted banks to treat frivolous claims the same way.

Furthermore, neither Check 21 nor the proposed changes to Regulation CC make it clear what happens in the event that a consumer disagrees with his bank's finding that his recredit claim is invalid. The Reserve Bank suggests that the Board's commentary could clarify that once a bank determines a claim to be invalid, a consumer cannot use the recredit procedures to seek review of this decision. Instead, the consumer should pursue his claim through legal process.

#### Section 229.57 - Consumer Awareness

The Board has proposed two alternative disclosure distribution procedures for consumers who receive substitute checks on an occasional basis. The Board's second alternative, providing disclosure at the time the substitute check is actually provided to the consumer, will likely have more immediate significance to the consumer. Receiving the descriptive disclosure information simultaneously with the substitute check should have more impact with the consumer, especially with those consumers who have been accustomed to receiving actual cancelled original checks previously. The first alternative, providing the

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consumer disclosure at the time the consumer requests a check, may cause confusion if the original check is ultimately provided to the consumer.

#### Appendix C - Model Forms

The proposed consumer disclosure notices appear to use simple and direct explanations of consumer rights and bank responsibilities under Check 21. Because there is no statutory safe harbor for the expedited recredit forms (C-22 through C-25), industry form vendors, which many banks use, may insist on less informative, less consumer-friendly forms. Nevertheless, the staff commentary expresses the Board's recommended use of the Appendix C forms and provides needed guidance to both the regulated institutions and examining authorities.

#### 11. Other Amendments to Regulation CC

These additional references to the E-Sign Act in the commentary to sections 229.13 and 229.15 are welcome, as many consumers have opted to use electronic communication channels with their banks. This proposed commentary also highlights banks' responsibility to fulfill their E-Sign Act requirements, which has not been previously expressed in Regulation CC.

In conclusion we support the Board's proposed changes to the consumer compliance provisions of Regulation CC. However, we do suggest that the Board clarify that banks must comply with the E-Sign Act in their electronic recredit communications with consumers. We also suggest that the commentary to the consumer recredit provisions clarify that a bank does not have to provide expedited recredit for frivolous claims and that consumers may only use the recredit procedures once per claim.

We hope that you find these comments helpful.

Sincerely,



Jack Gaynn